

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 23-90147
MOUNTAIN EXPRESS OIL COMPANY, . Chapter 11
et al., . 515 Rusk Street
Debtors. . Houston, TX 77002
Debtors. . Wednesday, March 22, 2023
Debtors. . 3:30 p.m.
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TRANSCRIPT OF FIRST DAY HEARING
BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY COURT JUDGE

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LAWRENCE PERKINS
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CRAIG BARBAROSH

MICHAEL HEALY

GEOFF RICHARDS

1 (Proceedings commence at 3:30 p.m.)

2 THE COURT: All right. Good afternoon, everyone.

3 This is Judge Jones. The time is 3:30 Central. Today is March
4 the 22nd, 2023. This is the docket for Houston, Texas. On the
5 3:30 docket, we have the jointly administered cases under Case
6 Number 23-90147, Mountain Express Oil Company.

7 Folks, please don't forget to record your electronic
8 appearance. That's a quick trip to my website, a couple mouse
9 clicks. You can do that at any time prior to the conclusion of
10 this afternoon's hearing.

11 First time that you speak, if you would, please state
12 your name and who you represent. That really does give the
13 court reporters a good point of reference and doing what is a
14 very difficult job these days.

15 We are recording this afternoon using CourtSpeak.
16 We'll get the audio up on the docket shortly after the
17 conclusion of the hearing. If you haven't tried it, I
18 encourage you to do so. It's a quick way to review what has
19 happened, and also, it's a nice thing to be able to forward to
20 your respective clients if they want to know what occurred
21 today.

22 And with that -- oh -- if you came in right at 3:30,
23 I previously made an announcement. I have activated the hand
24 raising feature. If you know you're going to be speaking this
25 afternoon, go ahead and give me a "five star" on your

1 telephone, I'll get you unmuted. Obviously, you can change
2 your mind at any time.

3 And with that, Mr. Pomerantz, are you starting us off
4 this afternoon?

5 MR. POMERANTZ: Yes. I am, Your Honor. Just wanted
6 to let the Court know that at least on my screen and, I think,
7 others', we can't see the names of any of the attendees. We
8 see the pictures.

9 THE COURT: Hmm.

10 MR. POMERANTZ: I'm not sure if the others do. It
11 doesn't affect me, I'm getting to know people's faces, but just
12 wanted to alert Your Honor to that.

13 THE COURT: No. Thank you. That should be easy
14 enough to do.

15 MR. POMERANTZ: Ah, there you go.

16 THE COURT: See, all you have to do is ask, and I can
17 deliver. It's my second career as an IT professional in case
18 the whole judge thing doesn't work out.

19 MR. POMERANTZ: Thank you very much, Your Honor.
20 Jeff Pomerantz of Pachulski, Stang, Ziehl & Jones, proposed
21 counsel for the debtors in possession.

22 And in the virtual courtroom with me from the company
23 today are Turjo Wadud and Lamar Frady, the debtors' co-founders
24 and co-CEOs; Dustin Martin, who's the debtors' chief operating
25 officer; Neil Lansing, who is the debtors' general counsel;

1 Lawrence Perkins, the managing director of SierraConstellation,
2 one of the debtors' two independent directors; and I believe on
3 the phone is Craig Barbarosh, a 30-year restructuring lawyer
4 with Katten Muchin Pillsbury. He's the other independent
5 director.

6 Also in the virtual courtroom are Michael Healy, the
7 proposed chief restructuring officer and managing director of
8 FTI and the witness at today's hearing, and Geoff Richards, the
9 managing director of Raymond James, the debtors' proposed
10 investment banker.

11 Ben Wallen, Steve Golden, and Henry Kevane of my firm
12 will be presenting the various first day motions to the Court.
13 Apparently, Mr. Wallen said all I could do was the opening and
14 they would take the rest.

15 I wanted to extend appreciation to the Office of the
16 United States Trustee for their availability over the weekend
17 and the last couple of days, and I'm pleased to report to the
18 Court that I believe we've worked through all of their comments
19 and that we have fully consensual orders.

20 Ditto with respect to First Horizon and the team at
21 Greenberg Traurig, and we believe they have signed off on all
22 the first day orders that we will present today for Your
23 Honor's consideration.

24 Also, as a result of the lag between the petition
25 date and now, we have had several conversations with major fuel

1 suppliers which, as Your Honor knows, are critical to this
2 business, and we have incorporated their comments into the
3 proposed order.

4 So we're hoping today could be as fully consensual of
5 a first day hearing and will go smoothly after what was
6 otherwise a little bit of a rocky start to this case.

7 But before I proceed with the overview of the
8 debtors' operations, the capital structure, and the reason why
9 we're here, I thought I would provide the Court with a little
10 update on the debtor-in-possession financing discussions with
11 First Horizon. We continue to make substantial progress in
12 negotiating the terms of a four-month DIP financing facility
13 that will provide funding for operations and for the cost of
14 administration of the case.

15 We have exchanged a debtor in possession credit
16 agreement, we've exchanged a DIP motion, and we have also
17 exchanged a proposed DIP order. They are in advanced stages of
18 negotiation. I believe we have reached agreements on all the
19 principal terms. But while we still have some wood to chop,
20 including the mechanics and requirements for initial funding to
21 occur, we are optimistic that we will get there.

22 Your Honor was kind enough to give us tomorrow at one
23 o'clock Central Time for a hearing on the DIP financing. And
24 given that clients and lawyers like deadlines, I would like
25 Your Honor to give us a deadline by which you would like to see

1 those documents so that you will have a sufficient opportunity
2 to review them in advance of the hearing.

3 THE COURT: I -- thank you. That was going to be a
4 topic of discussion. I also want other parties who may have an
5 interest in reviewing those documents to have adequate time. I
6 would like them filed by nine o'clock Central Time tomorrow
7 morning.

8 MR. POMERANTZ: That will be fine, Your Honor. We
9 will endeavor to get final drafts. I know, from appearing
10 before Your Honor in cases before, that if we have advanced
11 drafts, then we have to follow it up with incremental redlines
12 that will at least give everyone advance opportunities to
13 review the majority of the documents before. What we will do,
14 we will endeavor to make that happen.

15 I also would like to report to the Court we were in
16 advanced stages of negotiating potential priming loans with
17 lenders. I think the debtors' view is that proceeding with a
18 consensual DIP loan is better, and hopefully we'll get there.
19 But just so Your Honor knows, we are always contingency
20 planners, and we have a Plan B if we cannot.

21 THE COURT: All right. Let me --

22 MR. POMERANTZ: Your Honor --

23 THE COURT: Sorry.

24 MR. POMERANTZ: That's all right.

25 THE COURT: I was just going to tell you, I have had

1 -- only if it's helpful, I am not trying to move tomorrow's one
2 o'clock hearing -- if it turns out that you have stumbling
3 blocks, and I hope that you don't, but I've had a nine o'clock
4 slot on Friday morning open. I realize that's incredibly early
5 for all of our colleagues that are on the West Coast. I just
6 simply wanted to tell you that that slot has now opened up
7 based upon an announced settlement. So -- and I don't intend
8 on filling that space until we actually have a DIP hearing.

9 MR. POMERANTZ: I appreciate that, Your Honor. I'm
10 -- part of me, and I hope the lenders also will forget you said
11 that, because I think what the -- what the case needs, what the
12 creditors need, is liquidity quickly, and if we have a deadline
13 tomorrow, I'm confident that all the parties will work towards
14 it. But we appreciate that, and in the unfortunate
15 circumstances we're there, it's good to know that that's
16 available.

17 THE COURT: But the other comment --

18 Mr. POMERANTZ: Your --

19 THE COURT: The other comment I wanted to make
20 because, again, I've been down this road a couple of times and
21 I do understand how nervous your fuel suppliers can get at the
22 early stages of a bankruptcy case, I'm hoping that I can
23 provide some certainty today, even though we're not having a
24 DIP hearing. But what I was going to encourage you to do, to
25 the extent that they're not yet represented and to the extent

1 that they're not yet on the line viewing the hearings, is that
2 one of the things you might consider is having one of your team
3 members actually send the CourtSpeak audio. It really is a
4 handy tool. And I promise you, they can -- you can email it to
5 them, they can hit a button, and then they can actually listen
6 for themselves as to what occurred, and they can make their own
7 decisions. Again, not requiring it, just pointing out to it,
8 that it's intended to be a helpful tool and, in fact, does fill
9 that void sometimes.

10 MR. POMERANTZ: Your Honor, that's an excellent
11 point, and Mr. Golden, who's "Mr. Fuel Supplier" for the case,
12 he will, I'm sure, take you up on that, if there's anything we
13 can do to alleviate their concerns, and I know you have a way
14 of making comments that have the ability to alleviate people's
15 concern.

16 With that, Your Honor, I would ask if you could
17 please provide our paralegal, Patricia Jeffries, with screen
18 sharing privileges so that she could put up our PowerPoint
19 presentation.

20 MR. WALLEN: And, Judge, one point of clarification,
21 while you're doing that, it -- only you provided us 2 p.m.
22 tomorrow as the potential DIP hearing instead of nine o'clock.

23 MR. POMERANTZ: Oh, that's right. I apologize.

24 MR. WALLEN: Ben Wallen, Pachulski, Stang, Ziehl &
25 Jones, proposed for debtors.

1 THE COURT: Thank you, Mr. Wallen.

2 All right, Ms. Jeffries now has control.

3 MR. WALLEN: Okay.

4 (Pause)

5 MR. POMERANTZ: Okay. We might be having some
6 technical difficulties.

7 Ms. Jeffries are -- you wanted to hear us?

8 THE COURT: She actually just got off of GoTo
9 Meeting, so let's wait until she comes back.

10 (Pause)

11 THE COURT: Ms. Jeffries, if you're on the line and
12 you've come back as someone different, if you could raise your
13 hand for me. If you come back as Patricia Jeffries, I will see
14 you.

15 (Pause)

16 MR. GOLDSMITH: Your Honor, Steve Golden at
17 Pachulski, Stang, Ziehl & Jones. I have it up on my screen as
18 well, and I'm hoping my computer will cooperate. So in the
19 spirit of contingency planning, I'm happy to give it a go.

20 THE COURT: Always love folks that have a Plan B.
21 All right, so you now have control. All right, there we go.

22 MR. POMERANTZ: Are you able to see, Your Honor?

23 THE COURT: That is your ready to go.

24 UNIDENTIFIED: All right.

25 UNIDENTIFIED: (Indiscernible).

1 MR. POMERANTZ: Okay, Your Honor. What we'd like to
2 cover during our presentation, some of the information which
3 you heard before, is to provide Your Honor with an overview of
4 Mountain Express Oil Company, go through the circumstances
5 leading to the filing of these Chapter 11 cases, talk a little
6 bit about the debtors' plan of action, and then I'm going to
7 turn it over to my team to present first day motions to Your
8 Honor.

9 THE COURT: Okay.

10 MR. POMERANTZ: Next slide. Next slide.

11 Your Honor, the debtors are a vertically integrated
12 market leader in the fuel supply business. Mountain Express
13 was originally founded in 2000 by the Bierenbaums as a
14 distributor of fuel and lubricants. Mr. Wadud and Mr. Frady
15 joined the company back in 2003, and the company soon grew to
16 supply 180 fuel stations. The business was sold to Empire
17 Petroleum in 2010. Mountain Express, we entered the market in
18 2013 by re-acquiring 33 of the sites from Empire Petroleum.

19 In 2015, Mr. Wadud and Mr. Frady, who served as --
20 served management positions with the company for over a decade
21 became equity holders in the company, and in 2020, they became
22 co-owners of the business. Together, they own 97 percent of
23 Mountain Express Oil Company, which is the parent, with the
24 remaining 3 percent owned by third parties. Next slide,
25 please.

1 The debtors operate in 27 states, as reflected on the
2 map, mostly in the central and eastern United States. Next
3 slide, please.

4 The debtors control -- and this is a little small to
5 see, but the debtors control the ground leases at 550 sites;
6 352 of those sites are convenience stores that are operated by
7 the dealers in the debtors' network, and 171 are operated --
8 are convenience stores that are operated by the debtors. In
9 addition, the debtors operate 27 travel centers. The debtors
10 distribute fuel to 855 sites, which include the 550 controlled
11 sites that I mentioned, plus another 305 noncontrolled sites.
12 Next slide, please.

13 The debtors' model, as you can see there on the left,
14 has been to acquire the real estate containing convenience
15 stores, fuel centers, and travel centers, and to sell such
16 properties to investment vehicles, who would then lease the
17 properties back to the debtor under long-term leases.

18 Oak Street controls 286 of the debtors' 550
19 properties. The remaining landlords largely consist of REITs
20 and other ones and twos, moms and pops, and a handful of the
21 properties are owned by non-debtor affiliates.

22 The debtors, essentially, rebrand the acquired
23 location with a major national fuel supplier that it has a
24 relationship with, and the debtors then either operate the
25 convenience store or lease the location to a third party,

1 requiring that third-party dealer to purchase fuel from the
2 debtors under long-term supply contracts. Next slide.

3 The debtors' fuel distribution business is at the
4 heart of its business operations. The debtor have long-term
5 supply agreements with many of the largest companies of oil
6 distribution -- oil companies in the world, as reflected on the
7 slide. The debtors are Exxon's second largest customer
8 nationwide and the largest customer in the Southeast. 82
9 percent of the debtor's fuel is transported by third-party fuel
10 trucking companies. And because of the national shortage of
11 drivers in 2020 and 2021 due to the pandemic, the debtors'
12 principals formed Adelphi Transport, a non-debtor entity, to
13 shore up the debtors' fuel distribution business. And Adelphi
14 distributes 18 percent of the debtor's fuel, pursuant to market
15 rate contracts and also distributes fuel to nonaffiliated third
16 parties. Next slide, please.

17 Mountain Express is the parent of 143 entities, not
18 all of them which are reflected on this chart, but generally
19 speaking, the MEX RE entity, which is in the green box, which
20 is in the center right of the page. It is a tenant under a
21 prime lease and the sublandlord under a sublease. Each of the
22 MEX RE entities, the ones in green at the end of the chart, are
23 further subdivided into state and even regional subsidiaries.

24 The retail entities, which are in the blue box to the
25 left of the green, are subtenants of the MEX RE entities, in

1 instances where the debtors operate the fueling center or
2 travel center. And each of the retail entities are also
3 subdivided state or regionally, just like the MEX RE entities.

4 When the debtors are operating a convenience store,
5 the tenant is WHRGOPS entity, on the left, and where the
6 debtors are operating a travel center, it is the WHRG TC
7 entity, on the right of that blue box.

8 As part of a larger corporate reorganization, the
9 debtors intended to use the MEX fuel entities, which are to the
10 right of the MEX RE entities, as the contracting parties to the
11 oil companies or, largely, as of the petition date, so the oil
12 company agreements, are still with the parent, Mountain Express
13 Oil Company and the MEX fuel entities are largely inactive.

14 Finally, Your Honor, the Brothers entities, circled
15 in purple to the right of those entities, as the debtor
16 acquired in connection with the acquisition of Brothers
17 Petroleum (indiscernible) Louisiana. Those operations and
18 leases were consolidated with the debtors' other leases and
19 operations in the MEX RE and retail entities like I described.
20 Next slide, please.

21 The Mountain Express Oil Company board currently
22 consists of four individuals who I briefly mentioned before:
23 Mr. Wadud and Mr. Frady, who are also co-CEOs, and Mr.
24 Barbarosh and Mr. Perkins, who are two independent directors
25 brought in who have significant experience in the construction

1 world, both on the business side, Mr. Perkins, and on the legal
2 side, Mr. Barbarosh. Next slide, please.

3 Dustin Martin is the chief operating -- operations
4 officer, Neil Lansing is the general counsel, and Mr. Doug
5 Blankenship is the chief people officer. Next slide, please.

6 The debtors' professionals, which were all retained,
7 essentially, in the last three or four weeks, include our firm
8 as proposed restructuring counsel, FTI as chief restructuring
9 officer through Mr. Healy, Raymond James, and KCC. Next page,
10 please.

11 And really the key constituents, Your Honor, that you
12 will hear from and we will be looking at for this case are,
13 number one, first and foremost, the 971 people around the
14 country who depend upon this debtor and its related entities
15 for gainful employment; the fuel suppliers who comprise 25
16 million of the approximately 26 million in liquidated unsecured
17 claims; the dealers, who are 352 third-party operators, usually
18 family-owned businesses who are operating the fueling centers;
19 there's First Horizon, who is agent for the prepetition secured
20 creditor parties under a couple of different lending
21 facilities, which is owed approximately \$171 million; and
22 there's Oak Street, as I mentioned, who's a landlord in 286 of
23 the 552 sites; as well as there are other landlords I mentioned
24 before.

25 So, Your Honor, why are we here? And we talked about

1 this at the first day hearing, but everyone may not have been
2 there, so forgive me for repeating a little bit of myself.

3 From July 2021 to October 2022, Oak Street funded the
4 debtors' acquisition of 286 properties for an aggregate
5 purchase price of over \$825 million through 60 separate sale
6 leaseback transactions.

7 An Oak -- an Oak Street designee, Mr. Schweiker, was
8 appointed to the board as a condition for the financing program
9 on December 31st, 2021, and he sat on the debtors' board of
10 directors until January '23, when the relationship between the
11 debtors and Oak began to sour.

12 In connection with the sale-leaseback, the parties
13 entered into 46 side letters with respect to environmental
14 assessment and remediation code compliance and related matters
15 to be completed at some of the properties post closing.
16 Normal, routine type of stuff that you would expect to occur at
17 a gas station. So much so that they were so routine that,
18 basically, their completion did not hold up closing of any of
19 the transactions.

20 ***

21 In October 2022, the debtors, with Oak Street's
22 support, began to transition away from the owned and operated
23 convenience stores to focus on their fuel supply business. And
24 that was occurring over the next two, three months when things
25 between Oak Street and the debtor started to sour in early

1 2023.

2 Oak Street and the debtors entered into amendments to
3 their master lease agreements to facilitate Oak Street's
4 advancement of \$10 million to the debtor to cover its January
5 and February rent obligation to Oak Street under the master
6 leases. And soon thereafter, Oak Street started to demand that
7 the debtors relinquish properties from the master lease --
8 leases to allow Oak Street to sell them or re-tenant them to
9 third parties who would not be required and would essentially
10 not sign on to the debtors' fuel supply agreements. When the
11 debtors refused to do so, it caused the loss of the fuel supply
12 agreements, caused them to breach their minimum purchase
13 obligations with the fuel supplier, and thereby decimate the
14 value of the debtors' businesses and threaten their existence.

15 Oak Street started to become hostile. They sent the
16 debtors three separate notices of default on February 17th,
17 2023, each raising only nonmonetary defaults, principally
18 relating to the alleged failure to complete the post-closing
19 work with respect to the acquired properties. Prior to the
20 notice of the default, Oak Street had never complained to the
21 debtors regarding the pace at which post-closing work was being
22 completed. And in fact, the debtors have been diligent in
23 completing the work; the vast majority of which is done pending
24 governmental and regulatory approval. And Oak Street surely
25 knew this as its representative sat on the board of directors

1 until resigning in January of 2023. Nor did Oak Street raise
2 any concerns about the post-closing work when it amended and
3 restated, the master leases in January 2023.

4 Next slide, please. This is an example. On July
5 22nd, 2021, next closed a sale-leaseback transaction that
6 included five properties in North Carolina and entered into
7 side letters with respect to these properties. The letters --
8 side letters contemplated that certain work, including
9 completion of Phase IIs, would be completed by September of
10 2021. But it was only on February 17th, 2023, 515 days after
11 the listed completion date in the side letters, did Oak Street
12 transmit the default letter alleging that the debtors were in
13 default. It never was mentioned before February 17th, 2023.
14 This is one example, Your Honor, of many, many, many examples
15 in the group of 44 side letters, which would be the same.

16 The debtors retained restructuring advisors, trying
17 to negotiate a forbearance to -- with Oak Street to avoid a
18 Chapter 11 filing. They weren't really immaterial past due
19 with any of their suppliers. With respect to all their
20 landlords except one, they were continuing to pay rent. And
21 while they were in nonmonetary default with the lenders, the
22 relationship was cordial, was working toward -- forward, and it
23 was not the lenders who were pushing the debtors into a Chapter
24 11.

25 So as our first of course of business, we approached

1 Oak Street to obtain a 30-day forbearance agreement, just to
2 bring down the temperature and to allow the parties to sit and
3 try to sit down, talk about each other's interests, get them
4 comfortable that the work was being completed, and discuss what
5 type of overall restructuring could occur outside of the bank.

6 In response to that, the Oak Street demanded that the
7 debtors relinquish 150 properties, more than 50 percent of
8 their entire portfolio. And what would the debtors get in
9 exchange? They would get a 30-day forbearance. The debtors
10 told Oak that that would decimate their business, result in a
11 significant loss of employment for employees throughout the
12 country, and was simply not acceptable. While the parties
13 continued to talk about terms of a forbearance agreement, it
14 wasn't until March 15th, despite repeated requests, that Oak
15 Street finally provided the debtors with a form forbearance
16 agreement for that 30-day extension. And in that forbearance
17 agreement, while they reduced their demand to 75 properties
18 from the 150, they also asked for a payment of \$8.5 million and
19 access to all the debtors' creditors and lenders, again, as a
20 condition for a 30-day forbearance.

21 Acceding to Oak Street's demands, which we believe
22 the facts will demonstrate at the appropriate time as we know
23 this is not before the Court today, it was a clear power play,
24 trying to exploit nonmonetary defaults that existed for months
25 and months, when we had them completed or awaiting governmental

1 approval, just to give them their property back. This would
2 have been value destructive, and a breach of the debtors'
3 fiduciary duty to its stakeholders. And left with no choice,
4 the debtors filed bankruptcy on March 18th. And here we are.

5 Now that the debtors -- next slide, please. Next
6 slide, please. Now that the debtors in Chapter 11, they intend
7 to use the process to pursue a restructuring that maximizes the
8 value for all constituents. First, the debtors will continue
9 to transfer and to transition from their operated sites to
10 dealer sites. From October 20 -- October 2022 until the
11 petition date, the debtors converted 104 of those sites. We're
12 presently under contract to convert 55 of those fueling
13 centers. I'm sure we will be back to court for authority. And
14 we are marketing the remaining 45 fueling centers. We expect
15 the process to be completed by June 2023.

16 Thereafter, the company will be able to focus on its
17 core fuel distribution business, which is a very profitable
18 business. And at the same time, within the timeframe agreed to
19 with the lenders, we'll pursue a now-value maximizing
20 transaction, which will likely be a sale, but which under
21 certain circumstances, could be a plan of reorganization.

22 Your Honor, if you have -- Your Honor has no
23 questions, I would turn the podium over to Mr. Wallen, who is
24 going to, as I said, handle several of the first day motions.

25 THE COURT: All right, thank you. I -- very helpful

1 and I appreciate the detail and preparation that went into the
2 presentation.

3 Before I go to Mr. Wallen, is there anyone else that
4 would like to make, again, what I'll just take as opening
5 comments about the case. So Ms. Surinak, I've -- you don't
6 need to raise your hand. You can just tell me, hey, I'd like
7 to talk. That's all just fine. But thank you for the
8 courtesy.

9 MS. SURINAK: Thank you, Your Honor. Can you hear me
10 okay?

11 THE COURT: Loud and clear.

12 MS. SURINAK: Excellent. For the record, Your Honor,
13 Ashley Surinak of Kirkland & Ellis, LLC, on behalf of Oak
14 Street Real Estate Capital, LLC. And Your Honor, before I jump
15 into some remarks regarding the relationship between the
16 debtors and Oak Street, I would like to just make a few
17 comments about Oak Street generally to introduce them to the
18 Court.

19 THE COURT: Okay.

20 MS. SURINAK: Since 2009, Oak Street has closed
21 approximately 22.1 billion of deal volume with 129 tenants,
22 approximately 25 percent of which are recent partners. Until
23 Mountain Express, none of Oak Street's other tenants have filed
24 for bankruptcy. The debtors' situation is an outlier, and
25 where we find ourselves today is based on the unique

1 circumstances at play that led to the debtors' Chapter 11
2 filing on March 18th.

3 Oak Street is not the cause of these Chapter 11
4 cases, but rather these Chapter 11 cases are the result of the
5 debtors' actions or lack of actions thereof. As the debtors
6 set forth in their first day declaration, Oak Street has been a
7 key collaborative player in the growth of the debtors'
8 business. By Oak Street's count, they participated in 38 total
9 sale lease bank -- sale-leaseback transactions rather, over the
10 course of nearly two years, since May 2021, involving a total
11 of 277 properties and a total capital contribution of
12 approximately \$880 million.

13 Now, in addition to the capital contribution, Oak
14 Street has always been a very willing and committed general
15 partner to the debtors, often closing these transactions on
16 expedited timelines, sometimes in 30 days or less, in an
17 attempt to help the debtors close the transactions quickly and
18 also honor commitments to third (audio interference)
19 transactions.

20 Now as Mr. Pomerantz has flagged, the debtors and Oak
21 Street have entered into several side letter agreements as well
22 to remedy property level issues on a post-closing basis. While
23 most buyers would not agree to this, Oak Street, again, has
24 been very committed to be working with the debtors to support
25 the business and was more than happy to enter into those

1 agreements.

2 Additionally, and as stated in the first day
3 declaration, Oak Street in January 2023, provided the debtors
4 with an additional \$10 million in incremental funding to assist
5 with liquidity when the debtors made Oak Street aware that they
6 would be unable to make January rent payments under the master
7 lease agreements, the additional capital made available by
8 virtue of Oak Street's belief in the debtors' business and
9 trust in the debtors' management team.

10 Additionally, Oak Street did not send the events of
11 default on February 17th in a vacuum, and Oak Street's attempts
12 to remedy the events of default did not come out of the blue.
13 In fact, Oak Street did make multiple efforts to remedy the
14 shortfalls under the letter agreements and corresponding master
15 lease agreements on multiple occasions, on an informal basis,
16 in advance of sending those notices on February 17th. By way
17 of example, and not hashing this out in great detail at this
18 time, while negotiating the terms of the first amendment -- the
19 amended and restated master lease agreements in early January
20 2023, which was the subject of the \$10 million capital
21 contribution and also Oak Street's forbearance of certain rent
22 obligations -- Oak Street was in touch with Allen & Overy,
23 which was the debtors' counsel handling those lease amendments,
24 almost daily. Kirkland had reached out to Allen and Overy on
25 multiple occasions throughout January 2023, requesting certain

1 documentation and information that it was entitled to under
2 those master lease agreements. Those emails went largely
3 unanswered. And in addition to these efforts of counsel, Oak
4 Street's business team was in regular communication with the
5 debtors and their advisors, including meetings with the
6 debtors' management.

7 We'd also like to address just a few remarks with
8 regards to the events of default themselves. The debtors
9 assert that the defaults under the master lease agreements
10 represent a quote, "low level of technical noncompliance," just
11 by virtue of being nonmonetary and ongoing for months prior to
12 Oak Street sending the notices of default. While the defaults
13 were nonmonetary in nature, they were not insignificant to Oak
14 Street's ongoing business nor the relationship between the
15 debtors and Oak Street.

16 In addition, the timing of the events of default, in
17 the sense that they were ongoing for multiple months, does not
18 represent Oak Street's belief that the events of default were
19 insignificant, if anything, a representation of Oak Street's
20 willingness to allow the debtors ample time to remedy the
21 events of default under the master lease agreement.

22 Specifically, the events of default involved closing at least
23 17 of the stores, which the debtors were required to keep open
24 for business; failure to construct a gas station or convenience
25 store at one location; failure to provide required quarterly

1 financials for three fiscal quarters leading up to the notices
2 sent on February 17th; and failure to honor the post-closing
3 obligations set forth in the side letter agreements, which as
4 Mr. Pomerantz stated, were primarily regarding environmental
5 cleanup; and also obtaining various licenses, permits, and
6 easements necessary to continue to operate at those locations.

7 Oak Street's decision to send the notices of default
8 were largely driven by the debtors' inability to continue
9 meeting rent obligations under the master lease agreements.
10 And considering the duration and the substance of the defaults,
11 and the impact of the lack of information, financial reports,
12 and other requirements on Oak Street's ability to conduct its
13 ongoing business and continue doing business with the debtors,
14 Oak Street felt it had no choice but to pursue such action and
15 disagrees with the characterization of the default as a low-
16 level of noncompliance, or technical in nature.

17 Regarding the forbearance discussions, briefly: The
18 debtors have made several assertions that Oak Street did not
19 engage constructively and made several unreasonable demands in
20 the actual forbearance proposal itself and in discussions
21 regarding the forbearance. After sending the notices of
22 default, Oak Street had initially offered the debtors a seven-
23 day forbearance with very few conditions attached, including
24 the condition to relinquish the properties, which from Oak
25 Street's perspective, the request to relinquish the properties

1 was more so to address Oak Street's concerns that perhaps the
2 debtors' business had grown too quickly, and that paring back
3 the footprint would be a positive development and not value
4 destructive. After these initial discussions broke down, and
5 as Mr. Pomerantz flagged, the debtors' counsel has circulated a
6 form of extension and waiver agreement of the master release
7 agreements to Kirkland. And following the receipt of that
8 form, Oak Street's management team met on multiple occasions to
9 discuss the terms of a forbearance under which it would be
10 comfortable.

11 We sent the draft to debtors' counsel on March 16th,
12 2023. And following us sending this draft, we did not receive
13 a response from debtors' counsel regarding our proposed changes
14 to the forbearance agreement or a request for further
15 engagement or negotiation, or which terms were unworkable from
16 the debtors' perspective. The next correspondence we received
17 was to inform counsel to Oak Street that the debtors did intend
18 to file for Chapter 11, and then did so on March 18th.

19 Briefly to address the point of Mr. Schweiker's board
20 terms, as Mr. Pomerantz stated and not to rehash everything
21 that Mr. Pomerantz has stated, Mr. Schweiker -- or -- and Mr.
22 Schweiker being the principal and chief of staff of Oak Street,
23 served briefly on the debtors' board and the debtors asserted
24 by virtue of the short tenure of Mr. Schweiker, had had access
25 to certain information regarding the debtors' remediation

1 efforts. But Mr. Schweiker is unaware of any information he
2 received during his board's tenure that he otherwise wouldn't
3 have received by virtue of certain rights of Oak Street under
4 the master lease agreements.

5 Ultimately, Oak Street appreciates the debtors'
6 intent as expressed in the first day declarations to meet their
7 rent obligations in full, under the master lease agreements
8 during the pendency of these Chapter 11 cases. And although we
9 were unwilling to reach the terms of a -- unwilling -- unable
10 to reach the terms of a forbearance prior to these Chapter 11
11 cases, we are supportive of the debtors' restructuring efforts
12 and look forward to meaningful, productive engagements during
13 this Chapter 11.

14 THE COURT: All right. Thank you, Ms. Surinak. So
15 let me just -- I'm a fairly practical person. Can we all get
16 along and have economic conversations or do I have a bigger
17 problem?

18 MS. SURINAK: Oh, Your Honor, we are more than
19 willing to engage constructively with the debtors during this
20 process.

21 THE COURT: All right. Thank you.

22 MR. POMERANTZ: And as are we, Your Honor, and we've
23 found that with a court process, maybe that could aid in
24 facilitating that.

25 THE COURT: No, I got it, just trying to understand.

1 I appreciate the candor.

2 Anyone else wish to make, again, what I'll just take
3 as opening comments before we turn the podium over to
4 Mr. Wallen?

5 All right. Mr. Wallen?

6 MR. WALLEN: Good afternoon, Judge Jones. Ben
7 Wallen, Pachulski Stang Ziehl & Jones, proposed counsel to the
8 debtors. Judge, before we turn into the motions, a couple of
9 housekeeping matters if that works for you?

10 THE COURT: Of course.

11 MR. WALLEN: Judge, the debtors did file a witness
12 and exhibit list at Docket Number 61. The declaration of
13 Michael Healy, the debtors' chief restructuring officer is
14 attached thereto as Exhibit 1. So at this time, the debtors
15 would move, solely for purposes of today's first day hearing,
16 of the declaration of Michael Healy into evidence, which
17 appears on the docket as Docket Number 61-1.

18 THE COURT: Thank you. Any objections?

19 All right. Then it is admitted for purposes of
20 today. Anyone wish to cross-examine Mr. Healy? Well,
21 Mr. Healy, you escape for one more day.

22 All right. Then I -- declaration is in. No cross.

23 (ECF Number 61-6 admitted into evidence)

24 MR. WALLEN: Thank you, Judge. So, unless you'd
25 prefer a different order, the debtors propose to proceed

1 through the presentation of their first day motions as they're
2 listed on the agenda, filed at Docket Number 63.

3 THE COURT: I have it in front of me and that's just
4 fine.

5 MR. WALLEN: Thank you, Judge. So first up today, we
6 have the debtors' personal information and notice of
7 commencement motion filed at Docket Number 43. Pursuant to
8 that motion, the debtors seek authority to redact certain
9 personally identifiable information for individuals pursuant to
10 Section 107 of the Bankruptcy Code, as well as to approve the
11 form and manner -- manner, excuse me, of notice of parties
12 to -- in interest, of the commencement of these Chapter 11
13 cases. Section 107 of the Bankruptcy Code provides the Court
14 may, for cause, authorize the redaction of certain personally
15 identifiable information. The debtors believe that ample cause
16 exists here, in particular because of the size and prominence
17 of these cases. If this information were publicly available,
18 it could be used to perpetrate phishing or other fraud or scans
19 on those individuals, and also to locate the survivors of
20 domestic abuse such as the incident that occurred in the
21 Charlie -- Charming Charlie cases.

22 In addition, Judge, Rule 2002 requires the debtors
23 to, among other things, provide notice of their 341(a) meeting
24 of creditors as well as of the commencement of the cases.

25 Attached as Exhibit A to the proposed order is a proposed form

1 notice of commencement with that information included. The
2 debtors believe that that form notice satisfies the
3 requirements of Rule 2000. The debtors have had a chance to
4 visit with the United States Trustee, as Mr. Pomerantz
5 indicated earlier, and understand that they've signed off on
6 the proposed form of order.

7 So unless, Judge, you have any questions for me, the
8 debtors would respectfully request entry the proposed order
9 filed on a docket as Docket Number 43-1.

10 THE COURT: All right. Thank you. Anyone else wish
11 to be heard?

12 All right. Again, I think that I've been pretty
13 consistent in the past couple of hearings about being overly
14 protective, given -- of these folks who come to the bankruptcy
15 case involuntarily. And I have erred on the side of caution.
16 I, again, don't believe that this is the right landing place.
17 But until I can get great minds, like the folks who are on a
18 GoToMeeting this afternoon to come up with a solution, what I
19 am going to do -- and Mr. Ruff, I know you're going to object
20 to this and I -- your objection is noted -- I am going to take
21 where it says in Paragraph 2 -- it's not just the home
22 addresses of customers who are individuals, and all personally
23 identifiable information of minors. Number one, I appreciate
24 protection of our children. But I think that this, the
25 necessity, extends to the individual customers as well, and

1 especially given the language that allows folks to get the
2 information, if they demonstrate a proper purpose, I am going
3 to alter the document to provide that the same information is
4 included in 2(a) as well as 2(b).

5 And Mr. Ruff, again, you need to voice your
6 objection. I want you to do that. Again, I fully recognize
7 this is not the right landing place. I -- and I fully
8 understand that. But until I come up or until somebody comes
9 up with a solution that I think is appropriately protective,
10 I'm just going to err on the side of going too far on this one.

11 MR. RUFF: Thank you, Your Honor. Jayson Ruff for
12 the U.S. Trustee's Office. I will just note our objection for
13 the record and but we understand Your Honor comments as well,
14 so --

15 THE COURT: All right. Thank you.

16 So, Mr. Wallen, what I'm just going to do, because I
17 think it will fit -- let me show you this. Okay. So,
18 Mr. Wallen, if you will take a look at 2(a), it's a bit
19 duplicative, but I -- it just always hard to go in and start
20 editing PDFs without causing all sorts of unintended issues.
21 But the language that I've changed is in Paragraph 2(a).

22 MR. WALLEN: Judge, that language is acceptable,
23 excuse me, to the debtors.

24 THE COURT: All right, thank you. Anyone else have
25 an issue? Again, noting the U.S. Trustee's objection which I

1 agree with. It's just -- but I'm going to be overly protective
2 until we figure out the right scheme to have this work for
3 everybody going forward.

4 With that change as noted on the record, I, again, I
5 appreciate the request. I appreciate it's the very first
6 motion that we take up today. I will grant the relief
7 requested using the order submitted at 43-1, again with the
8 interlineation that we have made on the record this afternoon.
9 And that is off the docketing.

10 Mr. Wallen, what's next?

11 MR. WALLEN: Judge, up next, we have the schedules
12 extension motion, which appears on the docket at Docket Number
13 51. Under Section 521 of the Bankruptcy Code, each of the 144
14 debtors must file their individual schedules and statements
15 within 14 days of their March 18th, 2023, petition date.
16 However, under Bankruptcy Rule 1007 and 9006, the Court may
17 extend this period for cause. So by this motion, the debtors
18 request a 46-day extension of that 14-day deadline for a total
19 of 60 days through and including May 17th, 2023, to file their
20 schedules and statements.

21 Here, Judge, there are numerous debtors, as I say,
22 144, who have historically maintained their records on a
23 consolidated basis, or excuse me -- many of their records on a
24 consolidated basis. Moreover, Judge, prepetition, the debtors
25 lost their former chief financial officer and comptroller who

1 had extensive institutional knowledge regarding the details of
2 the debtors' operations, assets, and records. And I can tell
3 you in preparing the schedules and statements, they're going to
4 be missed.

5 And so while the debtors believe they have the right
6 team and advisors in place to prepare accurate schedules and
7 statements, they believe that the extension is appropriate.
8 The debtors wish to avoid a situation where they file
9 inherently inaccurate schedules because folks are looking at
10 those to rely on them in these cases. And so the debtors
11 believe that the extension requested is reasonable without
12 prejudice to the right to seek further extension from the
13 Court.

14 So, Judge, as with the earlier motion, the debtors
15 have conferred with the United States Trustee's Office. They
16 are signed off on the form of order. So unless Your Honor has
17 any questions for me, the debtors respectfully request entry of
18 the proposed order filed at Docket 51-1.

19 THE COURT: All right. Thank you. Anyone else wish
20 to be heard?

21 All right. Again, I read the motion again. Again,
22 you know, how important it is to me to -- for the first version
23 of these that come out to be as close to perfect as they can
24 possibly be. Don't like placeholders. I can only imagine that
25 certain members of the team, probably you included, not going

1 to get a lot of sleep over the next 40 days. And again, I --
2 this is a huge undertaking. I don't have any concerns. I
3 think the requested extension is appropriate.

4 Mr. Ruff, I assume this doesn't interfere with any of
5 your investigative and regulatory issues.

6 MR. RUFF: It does not, Your Honor. And we think it
7 strikes the right balance, at least at the outset of these
8 cases, of giving the debtors some time given the circumstances,
9 and then also giving them, if need be, you know, need to come
10 back to the Court to get additional time so --

11 THE COURT: All right. Thank you. Then, with that I
12 will grant the motion. I've signed the order that was attached
13 as 51-1.

14 Let me ask this, and again, I'm not trying to start
15 something that's not teed up for today: Is there a discussion
16 ongoing about MORs at this point or is that for another day? I
17 want folks to pay particular attention to this because I know
18 how expensive this is going to be.

19 MR. WALLEN: There are ongoing discussions. Your
20 Honor, there are ongoing discussions. It's for another day.
21 We, as with many debtors, this is, you know, an issue given the
22 change in the rules back in 2001. And to date, we have not had
23 an issue where we were not able to work through it so --

24 THE COURT: Fair enough. I just -- this one's sort
25 of accentuated a bit given how the corporate structure works,

1 so I'll just wait until someone decides to bring it to me.
2 Just wanted to know that it was being talked about.

3 Mr. Wallen, what's next?

4 MR. WALLEN: Judge, next we have the insurance motion
5 filed at Docket Number 50. As set forth in the motion, the
6 debtors have approximately 56 insurance policies, which are
7 identified in Exhibit 1 to the proposed order approving the
8 insurance motion. Of these, Judge, the debtors make
9 installment payments to Federal Mutual Insurance Company [sic]
10 for 11 of the policies. Those monthly payments are
11 approximately 430,000 -- 439, excuse me, thousand dollars, each
12 month. Additionally, Judge, the debtors did enter into a
13 premium financing agreement with respect to one policy, but
14 that was paid off before the petition date.

15 And so, by the insurance motion, the debtors request
16 authority to continue their insurance program on a post-
17 petition basis, including renewing, extending, amending,
18 supplementing, replacing any of those insurance policies,
19 including entry into premium financing arrangements as may be
20 needed.

21 In addition, Judge, I'll flag for Your Honor that
22 certain of the insurance policies identified in the motion have
23 deductibles and self-insured retention provisions. The debtors
24 don't believe that they have any amounts outstanding with
25 respect to those provisions, but out of abundance of caution,

1 request approval in their discretion to pay any prepetition
2 amounts with respect to those provisions. Similarly, Judge,
3 the debtors don't think they owe any broker fees with respect
4 to their insurance policies, but of course, out of an abundance
5 of caution, to pay any accrued but unpaid broker fees.

6 The debtors believe that maintaining an adequate
7 insurance program is an important part of any business and a
8 particular one in Chapter 11. In addition, Judge, as you know,
9 the United States Trustee's guidelines also provide that the
10 debtors are required to maintain adequate insurance. And so as
11 a result, the debtors believe in their reasonable business
12 judgment that the relief requested in the motion is
13 appropriate.

14 Similar to the other motions, Judge, we did confer
15 with the United States Trustee's Office. They've had an
16 opportunity to look at the proposed form order before we filed
17 and I understand that they've signed off. So unless you have
18 any questions for me, the debtors would respectfully request
19 entry of the requested order at Docket 50-1.

20 THE COURT: All right, thank you. Anyone else wish
21 to be heard?

22 All right. I do want to make sure, Mr. Wallen, as I
23 work my way through the things you brought to my attention --
24 and I very much appreciate it. I saw in the order where you
25 were seeking authority to effectively -- if you owed something

1 to an insurance carrier or an insurance broker with respect to
2 a particular policy where you sought permission to pay those.
3 I got that. That makes sense to me.

4 I did not see -- and maybe I just missed it. I did
5 not see language regarding the payment of a self-insured
6 retention. And that's -- I want you to come back to me for,
7 because I want to have a greater understanding of what the
8 claim is and how parties are viewing the self-insured
9 retention. Is it truly a self-insured retention? Is it a
10 deductible? Is there some language that you were actually
11 focused on when you made that statement? I just didn't see it.
12 I looked for it.

13 MR. WALLEN: Judge, none of that language comes to
14 mind specifically authorizing that as I review my notes to the
15 order. I don't see that in there. But given Your Honor's
16 comments, I think I agree with your suggestion of coming back
17 to you to the extent we need further relief from the Court.

18 THE COURT: I just -- a lot of things are going to
19 change in the case and again, how people view self-insured
20 retentions. And I have some pretty well-formed views on what
21 that entails. And again, not that I can't be persuaded in a
22 different direction, but I think that we -- I think everyone
23 involved ought to have the benefit of understanding where we
24 currently are at the point in time where the debtor decides
25 that it's appropriate to pay a self-insured retention or the

1 like. Other than that, I don't have any conditions or
2 comments.

3 Mr. Ruff, any objection to anything I've said? I --
4 again, I haven't changed the order. I just wanted it
5 understood that we come back and have a discussion should there
6 be a self-insured retention that's applicable.

7 MR. RUFF: Your Honor, no issues with the form of
8 order, and we appreciate Your Honor's comments and we agree
9 with them as well.

10 THE COURT: All right. Thank you. Then with that, I
11 will grant the motion. I've signed the order submitted at
12 50-1, and that is off the docketing.

13 Mr. Wallen, what's next?

14 MR. WALLEN: Thank you, Judge. Up next we have a tax
15 motion filed at Docket 49. By the tax motion, the debtors seek
16 authority to continue to pay taxes and related fees and amounts
17 to the relevant taxing authorities in the ordinary course,
18 including amounts which accrued or became due prepetition.
19 Among these taxes are sales and use taxes, franchise taxes, a
20 whole host of fuel taxes, ad valorem taxes, income taxes
21 related taxes, and permits and fees.

22 In addition, Judge, the debtors collect and remit
23 mounts -- amounts -- excuse me, excuse me -- related to the
24 sale of lottery tickets to the relevant authorities in the
25 ordinary course. In the aggregate, the debtors estimate that

1 they have at least 32 million in the aggregated and accrued,
2 but unpaid taxes and related fees and amounts as of the
3 petition date and request authority to pay such amounts post-
4 petition. The debtors believe that paying these amounts makes
5 good sense because certainly these amounts are not property of
6 the estate or they're otherwise entitled to priority and must
7 be paid in any event. Paying these taxes now will -- as they
8 come due, will prevent the accrual of additional penalties and
9 fees that will not inure to the benefit of other stakeholders.
10 In addition, Judge, the authorities could launch an action
11 against the debtors, which will needlessly distract against the
12 administration of the estates as the debtors move forward with
13 their sale and marketing process. So as a result, the debtors
14 believe the relief in the request is appropriate.

15 As with your earlier motions and orders, Judge, the
16 debtors did confer with the Office of the United States
17 Trustee, who I understand signed off on the proposed form of
18 order. So unless you have any questions for me, the debtors
19 will respectfully request entry of the proposed order filed
20 this time at Docket Number 49-2.

21 THE COURT: All right. Thank you. Anyone else wish
22 to be heard?

23 All right. I do think that the requested relief is
24 part of simply being a good corporate citizen and avoids the
25 incurrence of needless penalties and, in some instances, post-

1 petition interest. Again, it also recognizes that a number of
2 the monies that the debtor collects aren't in fact estate
3 property. So I appreciate the thought that went into this.

4 Only because of the time that you spent with me in
5 chambers, do I not get you to tell me what an ad valorem tax is
6 because I know that you know the answer to it. So I'm not
7 going to give you a chance to shine today.

8 I will grant the motion using the form of order
9 submitted at 49-2. That has been signed, and it's on its way
10 to docketing. What's next?

11 MR. WALLEN: Thank you, Judge. Next up, we have the
12 utility motion filed at Docket Number 53. In connection with
13 the operation of their business, as Your Honor might imagine,
14 the debtors obtain electricity, water, internet, and similar
15 such services in the ordinary course. The debtors pay
16 approximately \$70,000 each week and believe that they are
17 current or substantially current on all utility obligations.
18 The debtors assert to use cash on hand, use of cash collateral,
19 as well as a deposit of \$150,000 to be placed in a segregated
20 account, which represents a little over two weeks of utility
21 payments, looking at a 14-month lookback, will satisfy the
22 adequate assurance of future performance obligations under the
23 Bankruptcy Code.

24 In addition, Judge, the debtors do seek procedures
25 clarifying certain requirements for utility providers to seek

1 additional adequate assurance or to make an assurance request
2 if the debtors' post-petition obligations remain unpaid as of
3 their applicable due dates. The procedures which the debtors
4 are seeking approval of are typical for cases of these size in
5 this jurisdiction and provide additional clarity to utility
6 providers. Approving these procedures will not unduly
7 prejudice the rights of utility providers, and in fact, Judge,
8 they can enhance those rights by provided much needed clarity
9 for those utility providers to make an adequate assurance
10 demand or request. And they do not also prohibit the utility
11 providers from seeking relief from Your Honor.

12 The debtors believe that the relief is appropriate
13 and important to maintaining uninterrupted operations and
14 utility services as they go through this Chapter 11 process,
15 which will help maximize value for all parties in interest.
16 The debtors again have confirmed with the United States Trustee
17 and understand that they're supportive of the relief requested.
18 So, Judge, unless you have any comments for me, the debtors
19 would respectfully request entry of the proposed order granting
20 the motion as filed at Docket 53-1.

21 THE COURT: All right. Thank you. Anyone else wish
22 to be heard?

23 All right. I've looked at the process. I don't have
24 any concerns. It's consistent with other forms of adequate
25 assurance that I've approved. In other cases, I'll also find,

1 as I typically do, that I don't think that there is any
2 substantive prejudice to any party in this. In fact, this -- I
3 look at this as a procedural motion, as establishing an easy
4 protocol to resolve any disputes that might come up with
5 respect to any utility provider. I think this actually
6 benefits all parties concerned.

7 I've had a chance to review the proposed motion [sic]
8 that was filed at Docket 53-1. I have signed it. And it is on
9 its way to docketing. Mr. Wallen?

10 MR. WALLEN: Thank you, Judge. At this time, I'm
11 going to cede the podium to my colleague, Mr. Golden, who will
12 be turning to the wage motion.

13 THE COURT: All right. Thank you. Nice job.

14 Mr. Golden?

15 MR. WALLEN: Thank you.

16 MR. GOLDEN: Thank you, Your Honor. I was about to
17 say, that was a very tough act to follow, but I'm going to try
18 and do it because Mr. Wallen has given me the next four
19 motions.

20 So as we noted, I'll start with the wage motion,
21 which is, as I know Your Honor would agree, one of the most
22 important first day motions out there, or if not the most
23 important first day motion, because the debtors seek to honor
24 our prepetition obligations to our 971 employees all over the
25 United States in the ordinary course, and to continue the wages

1 and benefit -- benefits, we offer them post-petition in the
2 ordinary course of business.

3 Your Honor, I -- I'm going to, rather than recite
4 chapter and verse of the motion, which I'm sure Your Honor
5 reviewed, I'm going to take my mother's advice and talk less
6 and instead highlight a couple of the prepetition employee
7 obligation things that I think bear a little bit of emphasis,
8 and also just disclosure.

9 The first is that, as I think Mr. Pomerantz noted in
10 his introduction, there are two non-debtor Adelphi entities,
11 which are affiliated with the debtors through the majority
12 equity owners. They separately employ 102 employees, but
13 the -- those employees' payroll is consolidated through the
14 debtors' payroll system and as was prepetition. But prevent
15 the unnecessary disruption to those employees' payroll, who
16 just like the debtors' employees, rely on our payroll, we seek
17 to continue the practice in the ordinary course of business
18 provided just for the avoidance of all doubt that Adelphi will
19 be paying the debtors, making them whole for any amounts the
20 debtors pay.

21 ***

22 (4:30 p.m.)

23 MR. GOLDEN: They separately employ 102 employees,
24 but the -- those employees' payrolls get consolidated through
25 the debtors' payroll system and as was prepetition to prevent

1 the unnecessary disruption to those employees' payroll who,
2 just like the debtors' employees, rely on payroll, we seek to
3 continue the practice in the ordinary course of business
4 provided just for the avoidance of all doubt that Adelphi will
5 be paying the debtors, making them whole for any amount the
6 debtors pay. So just continuing that system post-petition and,
7 you know, no loss to the debtors and the debtors' estates.

8 In addition, as we flag, I think, in the motion,
9 certain of the 47 American Express corporate cards have been
10 issued to Adelphi employees, I think perhaps most notably
11 truckers who use that while they're on the road to transport.
12 Just as with employee payroll, Your Honor, in order to prevent
13 any disruption post-petition, the debtors are seeking authority
14 to continue that, again, subject to that reimbursement process,
15 so the debtors are not out money to a non-debtor affiliate. And
16 then --

17 THE COURT: No truck --

18 MR. GOLDEN: Sorry, Your Honor. Go ahead.

19 THE COURT: No trucks on the side of the road.

20 MR. GOLDEN: I -- absolutely not, Your Honor. That's
21 never a good thing.

22 And finally, with two possible exceptions which I'll
23 note in a second, the debtors don't believe that the wage cap
24 is implicated here. We did note in there that there are two --
25 excuse me -- \$20,000 incentive payments that the debtors will

1 owe, just by matter of timing, to individuals who were -- who
2 worked for Brothers Petroleum prior to that acquisition and who
3 were basically given an incentive payment if they would work
4 through the -- through -- I guess this was in 2021, so through
5 March of 2023. As far as I'm aware, those individuals are
6 still employed, and if they are still employed by the end of
7 this month, they're entitled to that payment which is, again, I
8 think from 2021 is when it was established.

9 So those are the three matters I wanted to highlight
10 for the Court and for all the parties. We also -- as
11 Mr. Wallen has said, we've consulted with the United States
12 Trustee. Mr. Ruff spent a nice amount of time with Mr. Wallen
13 and I. I believe the proposed form of order incorporates all
14 of their comments. Happy to defer him to confirm, but absent
15 that, Your Honor, we would ask that you enter the proposed form
16 of order.

17 THE COURT: All right. Thank you.

18 Anyone else wish to be heard?

19 All right. And Mr. Golden's exactly right. This is
20 the most important motion that I look at all day. Mr. Wadud, I
21 know that you are Mr. Super CEO or something to that effect,
22 which I hope means that you realize the value of those thousand
23 people that you employ because without those folks, this
24 enterprise has zero value. I want them to know that they're
25 going to get paid, I want them to know that I want 110 percent

1 effort from those folks, and I will make sure that nobody with
2 a coat and a tie ever comes and says you have to give your
3 payroll check back. All right?

4 All right. With that -- and again, Mr. Ruff, I
5 appreciate the practicality of it. I appreciate your working
6 through what could be technical objections. I don't have any
7 concerns. Again, I think it's just a practical approach to
8 ensuring business as usual.

9 I do want to make sure, Mr. Healy, you're going to
10 have a little bit of time, but I want to make sure that you
11 think about a way, once we get a committee engaged or even any
12 of the other folks who are already involved who want to take a
13 look, is that you come up with a transparent way to give a
14 glimpse into how the funds are flowing with respect to the
15 non-debtor entities. And, again, I know you'll work that out.
16 I just want you to give some thought to it and have a
17 transparent way of reflecting what has occurred on a historical
18 basis.

19 I have signed the order submitted at 44-1. It is on
20 its way to docketing.

21 Mr. Golden, what's next?

22 MR. GOLDEN: Thank you, Your Honor. And I believe I
23 was recently given the title by Mr. Pomerantz of Mr. Fuel
24 Supplier, so I'd like to turn to Docket Number 45, what we're
25 calling the fuel supplier motion or the very critical vendor

1 motion. You know, here, Your Honor -- just like the employee
2 motion, they're the life blood of the business -- the fuel
3 supplier motion really represents the business itself, and it
4 really does go to life blood -- another part of lifeblood of
5 the debtors' operations is its relationships with its fuel
6 suppliers. And I see some of the counsel on the line right
7 now. I've had the opportunity to speak with many of them over
8 the past several days, as has the company. And, Your Honor, as
9 I think the motion references, but for the bankruptcy filing,
10 the debtors would essentially be current with their fuel
11 suppliers. These are not old and cold amounts. These are, you
12 know, based off of the three -- usually three- to ten-day
13 payment terms. You know, these accrued basically three to ten
14 days before the petition date.

15 And the intent of this motion is really to, pardon
16 the pun, turn the pumps back on and return everything to the
17 status quo, and so therefore we seek authority to pay these
18 prepetition amounts due to the fuel suppliers and then continue
19 this relationship in the ordinary course. We are not seeking
20 to prejudice any fuel suppliers' rights under existing
21 agreements. Many of them have existing agreements with the
22 debtors. We are -- nor are we seeking to condition treatment
23 on, you know, signing any sort of definite form. There's
24 obviously flexibility built into the order, Your Honor, and
25 I'll get to that in just a moment.

1 And I don't want to leave anybody out because this
2 does cover our fuel transporters, as well, who, Your Honor, I
3 think, further your previous comment, we don't want them on the
4 side of the road because if they're on the side of the road,
5 our dealers are not getting fuel. So this also covers them.
6 They may also have lien rights, and so we are seeking authority
7 to pay our fuel transporters, again, subject to that aggregate
8 cap, basically in the ordinary course.

9 We did file an updated proposed form of order --

10 THE COURT: 76.

11 MR. GOLDEN: -- which did get revoked. And then a
12 second one -- yeah, 76, which clarifies a number of different
13 things but I think it really -- I think it takes a normal
14 critical vendor, which normally does not have any underlying
15 contract, and makes clear that sometimes there are contracts,
16 sometimes it's thought just a little bit broader, and so we
17 just wanted to clarify that after conversations with a lot of
18 our fuel supply constituency.

19 So, Your Honor I see a number of our fuel suppliers'
20 counsel on the line. I have nothing further unless Your Honor
21 has any questions but would certainly cede the podium to them.

22 THE COURT: All right, thank you.

23 Anyone else wish to be heard?

24 MS. WILLIAMSON: Your Honor, Deborah Williamson for
25 Valero --

1 THE COURT: THE COURT: Yes, ma'am.

2 MS. WILLIAMSON: -- Marketing and Supply Company.

3 THE COURT: Good afternoon.

4 MS. WILLIAMSON: Yes, sir. Good afternoon, Your
5 Honor.

6 To reaffirm what's been stated by Mr. Golden, we --
7 Valero Marketing and Supply Company is one of the fuel
8 suppliers that's supporting the debtor in this effort, and
9 we've reached an agreement to continue the prepetition advance.
10 It's a three -- for us it's a three-day advance. Payments are
11 dated three days after being made, and we will continue to do
12 that.

13 And Mr. Golden doesn't know this yet because it just
14 happened. We are willing to do that for the branded and the
15 unbranded fuel, and we've agreed to increase the credit line to
16 1.2 million from 1 million, which is our earlier discussions,
17 Your Honor, and we hope that this helps the debtor succeed, and
18 we fully support the motion.

19 THE COURT: Ms. Williamson, thank you for the
20 statement.

21 Anyone else? All right. Let's --

22 MR. GOLDEN: Your Honor, may I respond to
23 Ms. Williamson? I just want to thank Ms. Williamson. I saw
24 our COO and our CEO nod and smile when she made that statement,
25 and I just want to reaffirm that the debtors really appreciate

1 the partnership that we have with Valero and all of our fuel
2 suppliers. Mr. Wadud, I saw him just mouth the words "thank
3 you." And so we really do thank them. And thank you,
4 Ms. Williamson, for your accommodations to the debtor.

5 THE COURT: All right. Thank you. I likewise
6 recognize how -- what an important part of the success to the
7 enterprise that the fuel suppliers constitute, and I want them
8 to rest assured that to the extent that I have any input on it,
9 I recognize how important they are, and to the extent that
10 there needs to be further discussions, all someone has to do is
11 ask. I -- again, I don't have any issues at all with the
12 proposed relief that's been requested. I've got -- I've had a
13 chance to go through the revised order at Docket 76. I've
14 signed it, and all done. It wants to know that it's actually
15 me. All right. It is off to docketing.

16 MR. GOLDEN: Thank you very much, Your Honor.

17 The next motion I'll turn to is Docket Number 48,
18 which I'm calling the dealer reconciliation motion. And in
19 some respects, this is kind of our customer program motion.
20 The dealers really are our customers. And just as with the
21 previous motion, really the intent here is to preserve the
22 status quo with our dealers that are all over the United
23 States. Really, at a high level, the debtors -- there are
24 actually many different arrangements, I am learning -- but at a
25 high level, the debtors will collect credit card receipts and

1 other amounts for the benefit of the dealers which are
2 sometimes held as a deposit pending periodic reconciliation
3 due. You know, under the reconciliation, debtors might remit
4 overpayments or, again, pursuant to various different
5 agreements with the dealers might continue to hold as security
6 perhaps for dealers that are not so prompt with their payment
7 obligations to the debtors. And really, ultimately, this is
8 seeking authority to continue the prepetition practice under
9 the existing agreements with our dealers, just in the ordinary
10 course of business.

11 We did file an updated order at Docket Number 77. I
12 spoke with, you know, with my old friend, Mr. Eisenberg, and he
13 raised a concern that I thought made some sense, which was that
14 it could -- the order, as previously read, could have been read
15 to prejudice dealers and to say, you know, how we can amend or
16 modify or change the obligations of the party. That's not the
17 intent. The intent is just to keep the status quo, and
18 obligations are what they are under the agreement.

19 So we also did receive a request from Ms. Williamson
20 which was also added into the proposed form of order regarding
21 -- I think, that's perhaps a relationship that may be a little
22 bit more unique to Valero. But in any event, we were happy to
23 include that because it was consistent with our practice.

24 So, Your Honor, I would, of course, answer any
25 questions you have or turn the podium over to any of counsel

1 that may have comments.

2 THE COURT: Thank you.

3 First, let me confirm, Mr. Eisenberg, you just
4 happen to be nearer the top than Ms. Williamson, did the
5 revisions to Order 77 resolve your concerns?

6 MR. EISENBERG. It did with regard to this interim
7 order, Your Honor. Your Honor put your finger on it earlier in
8 the tax motion, is that the debtors are receiving funds that
9 are not estate properties. They're being collected on behalf
10 of third parties, and so it's important that -- that nature and
11 character that's maintained because that's the adequate
12 protection that these people have. And so with the edits that
13 they made, it allows for the interim cash collateral -- I mean,
14 the cash management motion to also work because the accounts
15 with these funds in them are being swept. And so this is an
16 ongoing, real-time issue, and we obviously reserve our rights
17 with regard to a final order here with regard to adequate
18 protection. But with the modifications that Mr. Golden was
19 kind enough to include, it certainly addresses our concerns on
20 the first day.

21 THE COURT: Thank you.

22 Ms. Williamson, the language that was added with --
23 to the order in 77, did that resolve your concerns?

24 MS. WILLIAMSON: Yes, Your Honor. It specifically
25 addressed the issue raised by Mr. Eisenberg. Most, if not all,

1 of the credit card receivables that biller processes really
2 should be paid to the dealers, and we just wanted to make sure
3 that Valero is protected by paying those receipts over to the
4 debtor, which will then engage in a reconciliation process.

5 THE COURT: Got it. Thank you.

6 Again, I appreciate everybody working through this.
7 The business model itself is unique. It needs some
8 flexibility. I recognize that. And I am just comfortable, at
9 least for now until I learned something different, that it just
10 makes sense.

11 Just want to make sure, Mr. Ruff, you had a chance --
12 or did you have a chance to look at the revisions that were
13 contained in Number 77?

14 MR. RUFF: I did, Your Honor. Thank you for asking.
15 I don't have -- no objections from the U.S. Trustee's Office to
16 those revisions.

17 THE COURT: All right. Thank you.

18 Anyone else wish to be heard?

19 All right. Then with that, I will grant the motion
20 using the revised form of order submitted at Docket Number 77.
21 And, again, I always appreciate the redlines. That order has
22 been signed. It's on its way to docketing.

23 Mr. Golden?

24 MR. GOLDEN: Thank you, Your Honor. Thank you, Your
25 Honor. You're almost done with me. I've only got one more to

1 go, and that is the more critical vendor motion which is the
2 more traditional critical vendor motion and covers two groups.
3 One is kind of your normal run-of-the-mill critical vendors
4 that are essential to the continued operations, and also lien
5 claimants. The traditional critical vendors, these are very
6 important to the debtors' operations. They are parties like
7 environmental remediation providers, specialized industry
8 software and technology, and other single-source or limited-use
9 -- so sorry -- single-source or limited-source providers of
10 goods and services, rather run-of-the-mill in that respect.

11 And the second bucket are statutory lien claimants, and
12 pursuant to that, Your Honor, we are not currently aware of any
13 presently asserted liens. But as is the nature of operating
14 fee stores and travel centers, the debtors sometimes have to do
15 work, and sometimes that work is performed by parties that
16 might be able to assert M&M liens. And I speak from multiple
17 bits of recent past experiences that sometimes cases are filed
18 against our landlords which may cause a default under the
19 leases, and the last thing we want to do is get off on the
20 wrong foot for relatively de minimis ordinary course
21 obligations that, but for the bankruptcy, we would've paid.

22 So we're asking, Your Honor, for the flexibility to
23 also pay those, again, subject to the caps provided in the
24 ordinary course, if they do arrive, to avoid those liens being
25 asserted.

1 So I'm happy to answer any questions, but we also
2 did, as with everything else, work with Mr. Ruff on this one.
3 I do not believe they have -- I believe they are fine with the
4 form of order, and we incorporated all of their comments.

5 THE COURT: All right. I -- number one, it's --
6 critical vendors are to be viewed narrowly, and I -- and not
7 that I don't think you have, just wanted to correct something
8 that you said. No such thing as an ordinary critical vendor.
9 They all -- they are all, again, special and unique to the
10 circumstances that the debtor is facing.

11 I don't have any concerns with the way that you've
12 gone about this. I think it's practical. I think it is as
13 close to returning things to business in the ordinary course as
14 you can possibly do under these circumstances. I appreciate
15 the fact that there's a cap, at which point, we'll revisit this
16 again. I don't have any concerns.

17 I will grant the motion using the order submitted at
18 46-2. It's off to docketing.

19 All right. Mr. Golden?

20 MR. GOLDEN: Thank you, Your Honor. That's it for
21 me, and I will pass the podium over to my partner, Mr. Kevane,
22 to present the cash management motion.

23 THE COURT: All right. Thank you. I appreciate the
24 presentation and the preparation. Thank you.

25 MR. GOLDEN: Thank you, Your Honor.

1 THE COURT: Thanks.

2 MR. KEVANE. Good afternoon, Your Honor.

3 THE COURT: Ah, Mr. Kevane, thank you.

4 MR. KEVANE: Can you hear me?

5 THE COURT: I can. I was trying to find you on my
6 screen. I now have you. Good afternoon.

7 MR. KEVANE: Henry Kevane with Pachulski, Stang,
8 Ziehl & Jones. I'm here to talk about the cash management
9 motion, which is docketed at Number 52. Essentially, this
10 motion, like many other similar cash management motions, seeks
11 customary relief, keeping our existing cash management systems
12 in place, authorizing the continued payment of bank fees that
13 are assessed against the deposit accounts that the debtor owns,
14 and perhaps most importantly, authorizing the continued
15 processing of intercompany transactions.

16 We're also asking for a limited waiver and extension
17 of the time to comply with our Section 345(b) requirement as to
18 certain depository institutions who are not approved depository
19 institutions. Those deposit accounts, in any event, carry
20 relatively small balances well below FDIC limits, even the
21 current limits. So we think that the extension and the waiver
22 that we've worked out with the Office of the United States
23 Trustee is appropriate in these circumstances.

24 The evidentiary basis for the cash management motion
25 is set forth in Mr. Healy's declaration. I think it would be

1 helpful perhaps if I could ask Patricia Jeffries to put up the
2 exhibit showing the account schematic, and I'll briefly give
3 some highlights on that. It'd be easier, I think, to see the
4 accounts in a visual format as opposed to me describing them.

5 THE COURT: All right. Let's see --

6 MR. GOLDEN: Your Honor.

7 THE COURT: Yes.

8 MR. GOLDEN: Your Honor, Steve Golden again. I'm
9 subbing in for Ms. Jeffries. If you could give me the ability
10 to share my screen.

11 THE COURT: Of course. Don't want to --

12 MR. KEVANE: Thank you, Mr. Golden.

13 THE COURT: Don't want to frighten her off. That's
14 -- want to see her next time.

15 MR. KEVANE: Now, these -- this is Exhibit 1 to the
16 cash management motion. There are two pages to Exhibit 1. The
17 first page, the one that's on your screen right now, is a --
18 kind of a master schematic, and it generally lines up with the
19 nature of the debtors' business that Mr. Pomerantz explained.
20 First, we have a fuel distribution business, and second, the
21 operation of convenience stores and travel centers.

22 If I can perhaps call the Court's attention to the
23 cluster of accounts on the left side that are called the
24 wholesale deposit accounts. These 11 accounts are organized by
25 fuel brand, although there are a couple at the bottom that

1 encompass a variety of fuel suppliers, and these are the main
2 source of all of the charges that are incurred by the debtors,
3 so fuel purchases from the major oil suppliers, as well as the
4 corresponding receipts for the retail of that fuel to either a
5 controlled retail center, a third-party retail center, or the
6 dealer-operated retail centers. So all 855 sites, whatever
7 they are categorized as, their payments for fuel flow into
8 these accounts by brand.

9 So if all of the inbound and outbound purchases
10 related to our fuel purchases are aggregated by brand, by
11 account, and virtually every day if there's a positive balance
12 in those accounts, they're swept up to the master operating
13 account that's just above. Sometimes due to a clause that are
14 made by the major suppliers, there's an overdraft position, in
15 which case the master operating account will make up that
16 shortfall.

17 This account schematic also shows some debt service
18 accounts with Iberia Bank, now First Horizon, and also has our
19 main corporate disbursement accounts. The rent that we receive
20 from our dealers and the other operated locations all passes
21 through these accounts and is commingled in the master account
22 and then paid out to the primary source.

23 Lastly, there is a shaded purple account, which is
24 titled the Retail Master Operating Account. That account
25 aggregates all the many accounts on the next page of the

1 exhibit that are organized by the debtors' various retail
2 siloes. So where the debtor operates, for instance, a quick
3 check store, the Fox Fuel Stores, the Fresh Pantry stores,
4 they're all organized in their own color-coded silo. They
5 each, by silo, have their own concentration accounts, but
6 they're all linked upstream to that prior account on that prior
7 page. I'm not going to go into a lot of detail here, but these
8 -- all these retail accounts, in turn, handle all of the
9 various purchases of sundries and services that are provided at
10 the retail level.

11 If I could go back, Mr. Golden, to the prior page.

12 We are asking, as part of this motion, to keep all of
13 these accounts intact. As the Court may have gleaned from my
14 explanation of the wholesale deposit accounts, the intercompany
15 transactions and the speed at which they're made is absolutely
16 vital to the smooth operation of the debtors. As I explained,
17 all the inbound payments for fuel, whether from in-house
18 locations, dealer sites, or true third-party sites, all (audio
19 interference) those deposit accounts by fuel brand, so any
20 interruption in the ongoing intercompany debiting and crediting
21 would bring operations to a standstill. So that is the basis,
22 I think, for our -- primary basis for our relief requested to
23 maintain intercompany transactions in the ordinary course of
24 business.

25 And finally, as I mentioned at the outset, although

1 the majority of our accounts are maintained at depository
2 institutions that have executed a uniform depository agreement,
3 some, mostly on the retail page, are not approved institutions.
4 But as we explained in the chart, I think it was Exhibit 3 of
5 our motion, the balances in the majority of those accounts, if
6 not all of them, are well below current FDIC-insured limits.

7 Nonetheless, we have (audio interference) with the
8 Office of the United States Trustee. If there are any further
9 steps that the Office of the U.S. Trustee would like us to take
10 to bring any of those non-approved depository institutions into
11 compliance, we will work with U.S. Trustee through May 4,
12 subject to extension, to comply with those requests.

13 And I do believe that the U.S. Trustee has seen the
14 form of order and that the language that we've inserted therein
15 is satisfactory to the Office of the U.S Trustee. And with
16 that, I have nothing further to add to my presentation.

17 THE COURT: All right. Thank you.

18 Anyone else wish to be heard? All right.

19 MR. RUFF: Your Honor --

20 THE COURT: Yes.

21 MR. RUFF: -- if I may very briefly. Again, Jayson
22 Ruff for the U.S. Trustee's Office. Just one, I guess, slight
23 correction to what Mr. Kevane represented. We're not agreeing
24 to -- in light of recent history, to any waiver of 345. We
25 are agreeing to allow for time because we recognize that no

1 debtor comes into a bankruptcy case automatically in compliance
2 with 345.

3 THE COURT: Sure.

4 MR. RUFF: And so I think, the -- you know, the order
5 strikes the balance of allowing the debtor the time to be able
6 to do that. The debtors are -- their main banks are in
7 authorized depositories, so I think we'll be able get that as
8 DIP accounts and get with the debtors in a reasonable amount of
9 time. And then, as was represented, the vast majority of these
10 local accounts that the stores deposit into are far, far below
11 the \$250,000 FDIC limit, so no concerns there.

12 I just want to -- we're very sensitive to the 345
13 waiver. So just so that the record is clear, we're -- there's
14 no waiver of 345 here, just that we are giving the debtors some
15 time to comply.

16 THE COURT: Oh, absolutely. And as we've seen over
17 the past couple of weeks, being on the approved list may not
18 mean all that much, and so we all need to be very diligent.

19 Mr. Healy, my request of you is, one, trying to
20 unwind this thing would be impossible, so figure out what you
21 can do to make this work. Also, urge you -- and as I know you
22 do, you watch the news, you listen to the radio, you do
23 whatever it is you do to stay informed -- if you need relief,
24 and I'm going to tell you this, once a regulatory agency takes
25 over, I can't do a thing. However, before that, I can do an

1 awful lot. I spent some time a couple of weeks ago signing
2 emergency orders. And, again, it's -- all I'm telling you is
3 stay vigilant, watch this. It's just one more thing on your
4 plate, but it is one that we need to pay attention to. And if
5 you need something, as I told you yesterday, I want you to ask
6 and ask quickly, as I want to do everything -- we all have an
7 obligation to do whatever we can do to make sure that this has
8 the greatest chance of success as it can possibly have under
9 the circumstances.

10 Mr. Ruff, I appreciate the clarification. I agree,
11 and I appreciate the practical approach because, again, trying
12 to -- if there was ever an attempt to unwind this, quite
13 frankly I'm not sure it's possible, but we hopefully will find
14 some middle ground on that one.

15 Let me ask, did the parties talk about a continued
16 hearing date?

17 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.

18 THE COURT: Mm-hmm.

19 MR. POMERANTZ: We internally were talking about it.
20 We haven't been able to communicate with any other
21 constituents, but we would seek either April 12th or April
22 13th, if it's acceptable to Your Honor.

23 THE COURT: Got it.

24 Let me propose -- let me ask, Mr. Ruff, could you
25 live with April 27th?

1 MR. RUFF: Yes, I could, Your Honor.

2 THE COURT: Mr. Pomerantz, could you live with
3 April 27th?

4 MR. POMERANTZ: You know, I don't think so, Your
5 Honor, because we are going to need our second (indiscernible)
6 of financing on the final. So unless Mr. Healy tells me I'm
7 wrong, I would think we were looking at something around about
8 the 12th. But if Your Honor -- if those dates don't work,
9 we're happy to figure out an alternative date to it.

10 THE COURT: Okay.

11 And, Mr. Elrod, do you have thoughts about this?

12 MR. ELROD: Yes, Your Honor. My views are consistent
13 with Mr. Pomerantz's. We would like a second day hearing
14 sooner than the 27th.

15 THE COURT: It was actually not that you didn't have
16 a second day hearing, it was just a continued hearing date on
17 this particular motion.

18 MR. ELROD: Oh.

19 THE COURT: I was fully prepared to segregate this
20 out because this is complicated. You're going to do your best
21 never to have to address this issue, and Mr. Ruff is trying to
22 help you in that regard. But if I'm misreading things, again,
23 I'll do my best to give you what you think you need.

24 MR. RUFF: Your Honor, I just -- if it's helpful you
25 know, the 27th sounds good to the U.S. Trustee's Office. And

1 if it's helpful, as we've done in other cases in the past, if
2 we work that we don't have to come before Your Honor, we can
3 always submit a proposed order, Your Honor, and advise chambers
4 that there's no objection.

5 THE COURT: That was sort of the thought process.
6 But, Mr. Elrod, again, I'm not trying to get in the middle of
7 anything that you're involved in. I was actually just trying
8 to make it easier, and I -- if I'm not, please feel free to
9 tell me.

10 MR. ELROD: No, Your Honor, I appreciate that, and
11 certainly I'll let the debtor proceed with that as it may.

12 THE COURT: Mr. Pomerantz, with that clarification do
13 you still have --

14 MR. POMERANTZ: Yes, I --

15 THE COURT: -- you still have a different preference?

16 MR. POMERANTZ: No. For the cash management motion,
17 I think the extra time is prudent. I jumped the gun. I've
18 been always told I shouldn't assume, I should ask questions,
19 and I violated that rule. So since it's only cash management,
20 I would just ask if it could be heard early in the day, and
21 notwithstanding -- I'm on Pacific Time -- do you have an early
22 -- do you have a morning hearing?

23 THE COURT: I certainly can. What I had done, and I
24 can change this, I had picked April the 27th at 1 p.m. Central
25 Time. I'm happy to make it 1 p.m.-- I'm sorry -- nine o'clock

1 Central Time if that's what you want.

2 MR. POMERANTZ: That would be better for me, Your
3 Honor.

4 THE COURT: Okay. And again, I don't think --

5 Mr. Ruff has always been able to work through these, and I
6 think everything's been done on a certificate of counsel thus
7 far, but if we need to have a hearing, we certainly will. So
8 we'll set a continued hearing on just the cash management
9 motion for April the 27th, 2023, at 9 a.m.

10 And everybody okay with an objection deadline of the
11 20th?

12 MR. POMERANTZ: Yes, Your Honor.

13 UNIDENTIFIED: Works for us, Your Honor.

14 THE COURT: All right. Then with that, I think last
15 shot. Anyone else wish to be heard?

16 All right. I have signed the order as we have
17 modified it on the record this afternoon. It has been signed
18 and is off to docketing.

19 All right. Mr. Pomerantz --

20 MR. KEVANE: Thank you, Your Honor.

21 THE COURT: Yes, sir. Thank you, Mr. Kevane.

22 Mr. Pomerantz?

23 MR. POMERANTZ: Your Honor, we need a second day
24 hearing, but that could wait until tomorrow since, Your Honor,
25 hopefully we'll be taking up DIP tomorrow.

1 THE COURT: So --

2 MR. POMERANTZ: Just for planning purposes
3 (indiscernible) --

4 THE COURT: Sure.

5 MR. POMERANTZ: -- we wanted to know if we do come
6 back the 12th to the 13th, if that's something that's available
7 if that works for the parties.

8 THE COURT: Yeah. I will find the time. The
9 question is, do you want to wait and see what those final
10 documents look like and then get a date tomorrow, or do you
11 want me to give it to you today.

12 MR. POMERANTZ: No, that's fine. But it was helpful
13 to hear what Your Honor said that we could look at those dates,
14 and that'll give us a plan so we could formally set that up
15 tomorrow when we --

16 THE COURT: Yeah. We'll figure it out. We'll figure
17 out as many options as we can and simply let you choose. But,
18 I -- you know, I will have to do -- on those days, I'll have to
19 do some moving, but I'm a good mover and a shaker, so I will
20 find time.

21 MR. POMERANTZ: Thank you, Your Honor, and to that
22 end, while it's certainly been enjoyable setting hearings with
23 Your Honor every day, we are sincerely hopeful that after
24 tomorrow, that will stop. We'll let you go on to your other
25 business, and we'll go hopefully reorganize or sell this

1 company and maximize value.

2 THE COURT: Well, I'm hoping that everybody that's
3 listening can leave with the understanding that we are going to
4 stabilize the business, and folks who are going to continue to
5 have business relationships can do that with confidence, and if
6 they need access to me, they have access to me, and that we all
7 get focused on figuring out what the future of the company is,
8 whatever that might be. So that's the goal. I hope that I've
9 done my small part in giving that assurance, and I'll see
10 everybody tomorrow. And, again, if you get late tonight and
11 something happens, just communicate with Mr. Alonzo and let him
12 know. Okay?

13 MR. POMERANTZ: Thank you very much, Your Honor.

14 THE COURT: Thank you everyone. Have a wonderful
15 evening, and we'll be adjourned.

16 MR. GOLDEN: Thank you, Your Honor.

17 (Proceedings concluded at 5:02 p.m.)

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C E R T I F I C A T I O N

3 I, Alicia Jarrett, court-approved transcriber, hereby
4 certify that the foregoing is a correct transcript from the
5 official electronic sound recording of the proceedings in the
6 above-entitled matter.

11 ALICIA JARRETT, AAERT NO. 428 DATE: March 27, 2023

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